



"Nyhart, Nicholas" <NNyhart@publiccampaign.org> on 04/09/2004 02:04:11 PM

To: politicalcommitteestatus@fec.gov

cc:

Subject: Comments on NPRM 2004-06 from Public Campaign

Please find attached Public Campaign's comments on NPRM 2004-06

Nick Nyhart

Executive Director

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- Public Campaign NPRM 2004-06 Comments.doc

April 9, 2004

Ms. Mai T. Dinh  
Acting Assistant General Counsel  
Federal Election Commission  
999 E Street  
Washington, D.C. 20463

**Re: Comments on the Notice of Proposed Rulemaking on Political Committee Status  
(NPRM 2004-06)**

Dear Ms. Dinh,

The Notice of Proposed Rulemaking 2004-6 currently being considered by the Federal Election Commission raises a number of important issues. Public Campaign, a seven year-old organization that works to educate the public with regard to the problems of money in politics and appropriate solutions, has particular concerns with the likely consequences of the rulemaking on the future flow of politically-interested money, the effective date of any new regulations, and the specific definitions of political expenditures and election activity which mandate regulation by the FEC.

Much of Public Campaign's focus has been on public financing policies, rather than purely regulatory solutions to campaign finance ills. In particular, we have supported the Clean Elections model of full public financing now fully functioning in Maine and Arizona. We are motivated by the need to protect American government and the political process from corruption and to advance the principle of equality in the political process. While of great concern, we don't simply focus on the quid-pro-quo corruption that occurs when interested parties gain favor with elected officials by giving them political contributions. We also consider whether a system that relies heavily on interested money can ever treat those without wealth fairly and equally. Whatever inequities may exist in other realms of our society, Americans are supposed to be equal to each other within the political process. The present system, in which superior access to political funds give candidates an edge and major funders a greater voice in the political process, falls far short of the democratic ideal. Even with the passage of the Bipartisan Campaign Reform Act of 2002, we remain far from the "one person, one vote" premise of our political system.

The passage of BCRA created a clear separation between candidates and their parties and the huge soft money donations from special interest donors, addressing specific concerns regarding one kind of quid-pro-quo corruption. However, it did not attempt to level the playing field for candidates, organizations, or individuals without access to wealth. Indeed, the increases in various contribution limits widened the gap between those with little money and those with lots.

This first post-BCRA election cycle has seen an increased emphasis on the bundling of \$2,000 donors for candidates and plans to use Section 527 organizations as a means to engage in voter contact during the whole course of an extended political season. The proposed rules, if enacted, could create yet another shift, increasing the political value of certain moneyed players in the system, while devaluing others. If all Section 527 organizations are forced to raise funds under the rules established for political committees, we can expect a number of changes that would include:

- even greater reliance on mass bundlers of \$2,000 contributors to candidates;
- increased emphasis on \$5,000 donors, the maximum that can be given to a political action committee;
- potentially, a shift in funds from existing Section 527 organizations into issue groups, for much the same activity, but without the public disclosure provisions currently applied to the 527s;
- those individuals now in a position to make extremely large contributions to the Section 527 groups simply spending the money directly through independent expenditures to effect political outcomes.

It is abundantly clear to us that the goals of political equality and enhanced participation are not automatically served by these changes. As long as reform rules and laws concern only restrictions and limits on politically-oriented speech paid for by private contributions, the voices of ordinary Americans are diminished. With even a \$2,000 contribution beyond the means of all but a few Americans, the question of rearranging the conduits and capacities of large donors is a nearly irrelevant one with regard to equity issues, unless it is done in the context of substantial public financing.

Second, significant changes in campaign finance laws, policies or rules should not be made late in the election cycle. The rule changes now being considered would radically re-arrange the fundraising and political activities set in motion after the passage of BCRA. Many of those 501(c) and Section 527 organizations planning to engage in public communication about issues, officeholders, and candidates during this election cycle have structured their fundraising plans and communications activities to comply with the changes in the law brought by BCRA and also those areas of the law and regulatory policy that have remained constant. Some have argued that these changes are warranted because of a reinterpretation of the Federal Election Campaign Act. Whatever the case, to introduce what is clearly a considerable change in policy so late in the election cycle both undermines the confidence that issue and advocacy groups can have in the regulatory process and sets a dangerous precedent for partisan political tampering in future years.

The contemplation of fundamental changes in complicated policy would be far better made in a less charged environment and with more time. The record number of comments received by the FEC on this rulemaking speaks to its importance and breadth. The barrage of e-mails on this topic has been generated by both deeply partisan interests and non-partisan groups alike, giving testimony to the far-reaching consequences of the proposed rules. Should major changes in the rules be developed within the short

rulemaking timeframe they will be made without being based on a foundation of empirical evidence and without clarity as to their ultimate impact.

We strongly urge the Commission not to make new rules that will go into effect for the 2004 cycle and that changes in the rules that introduce important new policies unspecified by Congress be left for the legislative process. For the longer haul, we support the adoption of laws that will balance the legitimate rights of individuals and organizations to speak in the civic arena with the compelling value of political equality. In our view such a balance cannot properly be achieved without the equitable use of public funding for political campaigns.

Sincerely,

Nick Nyhart  
Executive Director  
Public Campaign